

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF)	
DELMARVA POWER & LIGHT, D/B/A)	
CONECTIV POWER DELIVERY, AND)	PSC DOCKET NO. 04-136
FIBERTECH NETWORKS, LLC, FOR)	
APPROVAL OF A POLE ATTACHMENT)	
AGREEMENT (FILED APRIL 13, 2004))	

IN THE MATTER OF A COMPLAINT FILED)	
BY FIBER TECHNOLOGIES NETWORKS, LLC,)	
VS. DELMARVA POWER & LIGHT COMPANY,)	PSC COMPLAINT DOCKET
D/B/A CONECTIV POWER DELIVERY,)	NO. 327-04
CONCERNING TERMS OF A POLE ATTACHMENT)	
AGREEMENT FILED ON APRIL 13, 2004)	
(FILED APRIL 16, 2004))	

ORDER NO. 6421

This 18th day of May, 2004, the Commission finds, determines, and Orders the following:

1. On April 13, 2004, Delmarva Power & Light Company, d/b/a Conectiv Power Delivery ("Conectiv"), and Fiber Technologies Networks, LLC ("Fiber Tech"), filed an application with the Commission for approval of a Master License Agreement for Pole Attachments, dated March 10, 2004. (PSC Docket No. 04-136.) The Agreement contains negotiated annual attachment rates per pole and per foot of conduit to be used to compute annual payments. The Agreement is for an initial three-year term.

2. On April 16, 2004, Fiber Tech filed a formal complaint with this Commission alleging that Conectiv is denying it access to Conectiv's poles by imposing unreasonable and discriminatory rates, terms, and conditions, and that Conectiv's actions are in violation of their Pole Attachment Agreement. (PSC Complaint Docket No. 327-04.)

With its Complaint, Fiber Tech seeks, among other things, interim and temporary relief under which it may construct a temporary network on Conectiv's poles. Fiber Tech alleges that it must begin constructing the temporary network by May 31, 2004, as it has contracted with a business in Delaware to build a fiber-optic network by August 2004, which will require it to attach a portion of its network to approximately 21 miles of poles owned and controlled by Conectiv, or it will risk losing a major customer.

3. By PSC Order No. 6407 (May 4, 2004), the Commission consolidated PSC Dockets Nos. 04-136 and 327-04, established an expedited schedule for Fiber Tech's request for interim relief, and referred the proceedings to a Hearing Examiner. After commencing discovery on the request for interim relief, the parties, on May 12, 2004, reached a settlement agreement by which Conectiv would permit Fiber Tech to construct, under the conditions outlined below, a temporary network on its poles.

4. Commission Staff, through its outside consultant, reviewed the settlement agreement to ensure that the proposed temporary network did not compromise safety or system reliability. Based on its review, Staff has recommended approval of the proposed temporary network.

Now, therefore, **IT IS ORDERED:**

1. That, based on the presentations made by Delmarva Power & Light Company, d/b/a Conectiv Power Delivery, and Fiber Technologies Networks, LLC, to the Commission on May 18, 2004, and on Staff's recommendation, the Commission hereby grants Fiber Technologies Networks, LLC's request for interim relief upon the conditions that:

(a) the temporary network shall remain compliant with the National Electrical Safety Code ("NESC"), local, state, and federal law, and Delmarva Power & Light Company, d/b/a Conectiv Power Delivery's construction standards, other than clearance requirements and the use of boxing to the extent these issues are in dispute and provided such installation complies with the requirement, set forth in this section, that it achieve a greater clearance from electric facilities than the highest existing communications line that was installed in compliance with the NESC; (b) Fiber Technologies Networks, LLC, complete payment of the Performance Bond pursuant to Section 20 of the Master License Agreement, and provide an additional \$150,000 performance bond to mitigate the additional costs of make-ready and to guarantee the completion of any upgrade needed to make the attachment permanent; (c) Fiber Technologies Networks, LLC, after a hearing and decision in this proceeding, make or pay for any and all modifications that may be necessary to make these temporary attachments permanent pursuant to the Commission's decision and Section 4 of the Master License Agreement and, more particularly, Sections 4.10, 4.11, and 4.12 of the Master License Agreement; and (d) Fiber Technologies Networks, LLC, shall defend, indemnify, and hold harmless Delmarva Power & Light Company, d/b/a Conectiv Power Delivery, from all claims, actions, losses, or expenses, including court costs and reasonable attorney fees, arising out of or relating to the temporary network, including, but not limited to, a breach of these conditions, or from loss or bodily injury to persons or property (real or tangible), caused by the act or omission of Fiber Technologies Networks, LLC, including loss or

injury caused by the negligent acts, omissions, or intentional wrongdoing of Fiber Technologies Networks, LLC, and any and all fees, penalties, or fines assessed against Delmarva Power & Light Company, d/b/a Conectiv Power Delivery, associated with a violation of the NESC or any applicable laws, rules, regulations, or legal requirements. Fiber Technologies Networks, LLC's cable attached by means of temporary attachments to any pole or poles, submitted in their applications, shall at all times maintain a greater clearance, measured vertically, from Delmarva Power & Light Company's, d/b/a Conectiv Power Delivery, facilities attached to the same pole or poles than does the existing communications cable that is located closest to Delmarva Power & Light Company's, d/b/a Conectiv Power Delivery, facilities and that was installed in compliance with the NESC, and shall at all times maintain at least a 12-inch separation from any adjoining communications cable. Fiber Technologies Networks, LLC, shall use an extension bracket, where necessary, to achieve such clearance and separation, which bracket shall be attached by means of a metal band secured around the pole and shall not be attached by means of a bolt.

2. That PSC Dockets Nos. 04-136 and 327-04 shall proceed as directed under PSC Order No. 6407, with William F. O'Brien as Hearing Examiner and James McC. Geddes, Esquire, as Rate Counsel.

3. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary and proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae
Chair

/s/ Joshua M. Twilley
Vice Chair

/s/ Joann T. Conaway
Commissioner

/s/ Donald J. Puglisi
Commissioner

/s/ Jaymes B. Lester
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary